
STATUTORY INSTRUMENTS

1997 No. 1972

EDUCATION, ENGLAND AND WALES

The Education (Fees and Awards) Regulations 1997

Made - - - - *11th August 1997*
Laid before Parliament *11th August 1997*
Coming into force - - *1st September 1997*

The Secretary of State for Education and Employment, in exercise of the powers conferred on the Secretary of State by sections 1 and 2 of the Education (Fees and Awards) Act 1983(1), hereby makes the following Regulations:

Citation, operation and extent

1.—(1) These Regulations may be cited as the Education (Fees and Awards) Regulations 1997 and shall come into force on 1st September 1997.

(2) These Regulations do not extend to Scotland.

Interpretation

2.—(1) In these Regulations—

“award” means a fees award or a maintenance award or both as the context may require;

“education” includes post-graduate research otherwise than in the course of employment;

“education authority” means a local education authority;

“employment” means full-time employment or part-time employment which, in a normal week, involves a significant number of hours of work and “employed” shall be construed accordingly, and for the purposes hereof the references to employment include references to the holding of any office and to any occupation for gain;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(2) as adjusted by the Protocol signed at Brussels on 17th March 1993(3);

“EEA migrant worker” has the meaning assigned to it in paragraph (6);

(1) 1983 c. 40, amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91, by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 19, by the Education Act 1994 (c. 30), Schedule 2, paragraph 7, and by the Education Act 1996 (c. 56), Schedule 37, paragraph 57.

(2) Cmnd. 2073.

(3) Cmnd. 2183.

“European Economic Area” means the area comprised by the member States of the European Community (including the United Kingdom) as constituted from time to time and, subject to the conditions laid down in the EEA Agreement, by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“fees” includes charges however described;

“fees award” means an award in respect only of any fees payable by the person other than any element of those fees representing or attributable to charges for his maintenance;

“the Islands” means the Channel Islands and the Isle of Man;

“maintenance award” means any award other than a fees award;

“national of a member State of the European Community” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community (including the United Kingdom) as constituted from time to time;

“refugee” means a person who is recognised by Her Majesty’s Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951⁽⁴⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽⁵⁾ and any reference to the child of a refugee includes a reference to a person adopted in pursuance of adoption proceedings and a step-child;

“relevant date” has the meaning assigned to it in regulation 4, 5, 6 or 7.

(2) For the purposes of these Regulations an area which—

- (a) was not part of the area comprised by the member States of the European Community or by the European Economic Area, but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas

shall be considered to have always been part of the European Economic Area.

(3) Notwithstanding section 11 of the Interpretation Act 1978⁽⁶⁾ section 3(2) of the Education (Fees and Awards) Act 1983 (references to the United Kingdom to include references to the Islands) shall not apply for the purposes of the interpretation of these Regulations.

(4) For the purposes of these Regulations a person shall be treated as ordinarily resident in England, England and Wales, Great Britain, the United Kingdom, the United Kingdom and Islands or the European Economic Area, if he would have been so resident at the relevant time but for the fact that he, his spouse, his parent, guardian, any other person having parental responsibility for him, or any person having care of him while he is a child, is or was temporarily employed outside the area in question.

(5) For the purposes of regulations 6 and 7 a person shall be treated as ordinarily resident in the areas referred to in paragraph (4) if he would have been so resident at the relevant time but for the fact that he or his spouse was temporarily receiving full-time education outside the area in question.

(6) In these Regulations a reference to an EEA migrant worker is a reference to a person who is a national of a member State of the European Economic Area who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, as extended by the EEA Agreement⁽⁷⁾; or

(4) Cmnd. 9171.

(5) Cmnd. 3906 (Out of print; photocopies are available, free of charge, from the Student Support Division, Room 1A10, the Department for Education and Employment, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

(6) 1978 c. 30.

(7) OJ No. L257, 19.10.68, p.2 (OJ/SE 1968 (II), p.457).

- (b) in circumstances were as a national of the United Kingdom he has an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of the above mentioned Council Regulation.

(7) In these Regulations, unless the context otherwise requires, a reference to a regulation or Schedule is a reference to a regulation of these Regulations or to a Schedule thereto, a reference in a regulation or Schedule to a paragraph is a reference to a paragraph of that regulation or Schedule and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.

Lawful acts

3.—(1) Nothing in these Regulations shall be construed as rendering unlawful any discrimination arising from the remission in whole or in part of any fee (on grounds of financial hardship or otherwise) if it would have been lawful had these Regulations not been made.

(2) Nothing in these Regulations shall be construed as rendering unlawful any discrimination arising from any rule of eligibility for an award if it would have been lawful had these Regulations not been made.

Fee charging

4.—(1) It shall be lawful for the institutions referred to in paragraph (2) to charge higher fees of the type mentioned in paragraph (3) in the case of a person who is not mentioned in the Schedule than in the case of a person who is so mentioned.

(2) The institutions referred to in paragraph (1) are institutions—

- (a) within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992⁽⁸⁾, including a constituent college, school or hall of such an institution;
- (b) within the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992;
- (c) maintained by an education authority; and
- (d) eligible for funding under Part I of the Education Act 1994⁽⁹⁾.

(3) The fees referred to in paragraph (1) are:

- (a) any fees for admission, registration or matriculation (including matriculation exemption);
- (b) any sessional or tuition fees;
- (c) any composition fee; and
- (d) any graduation fee

in each case excluding any element thereof representing or attributable to such fees as are mentioned in paragraph (4).

(4) The fees referred to in paragraph (3) are:

- (a) college fees or dues at the University of Oxford, at the University of Cambridge or at St Chad's, St John's or Ushaw College of the University of Durham;
- (b) any fees charged by an external body in respect of examinations or validation of a course or otherwise charged by such a body whose requirements must (for the purposes of the course) be met; and
- (c) charges for board and lodging.

⁽⁸⁾ 1992 c. 13.

⁽⁹⁾ 1994 c. 30.

(5) For the purposes of this regulation fees shall be considered to be charged on the last date or dates on which they are required to be paid by the person, and not on the date or dates on which he enters an agreement to pay them, or on which he receives an account in respect of them.

(6) For the purposes of the application of this regulation a reference in the Schedule to “relevant date” is a reference to the 1st September, 1st January or 1st April closest to the beginning of the first term of the person’s course.

Awards by education authorities

5.—(1) It shall be lawful for an education authority to adopt rules of eligibility for awards under section 1(6) or 2 of the Education Act 1962⁽¹⁰⁾ which confine eligibility—

- (a) in the case of fees awards to the persons mentioned in paragraphs 1, 2, 5, 6, 7 and 8 of the Schedule; and
- (b) in the case of maintenance awards to the persons mentioned in paragraphs 1, 2, 6, 7 and 8 of the Schedule.

(2) It shall also be lawful for an education authority to adopt rules of eligibility which confine eligibility to the persons who would be mentioned in paragraph (1) if the references to paragraph 2 of the Schedule were deleted, or if regulation 2(4) did not apply to the interpretation of the Schedule.

(3) For the purposes of the application of this regulation a reference in the Schedule to “relevant date” is a reference to the 1st September, 1st January or 1st April closest to the beginning of the first term of the person’s course.

Awards by research councils and others

6.—(1) It shall be lawful for a body or institution mentioned in paragraph (3) to adopt rules of eligibility for awards (however described) in connection with courses of education or training in connection with the undertaking of research which confine eligibility—

- (a) in the case of fees awards to—
 - (i) the persons mentioned in paragraphs 1, 2, 5, 6, 7 and 8 of the Schedule, or
 - (ii) the persons who would be mentioned in sub-paragraph (i) if references to the United Kingdom and Islands in paragraph 9 of the Schedule were references to Great Britain, or
 - (iii) the persons mentioned in sub-paragraph (i) excepting persons mentioned in paragraph 1 of the Schedule who are not ordinarily resident in Great Britain, in England and Wales or in England, as the maker of the awards has determined, on the relevant date, or who cannot satisfy the maker of the awards that they will be so resident on the 30th June next following that date, or
 - (iv) the persons who are mentioned in sub-paragraph (ii) excepting persons mentioned in paragraph 1 of the Schedule who are not ordinarily resident in England and Wales, or in England, as the maker of the awards has determined, on the relevant date, or who cannot satisfy the maker of the awards that they will be so resident on the 30th June next following that date;
- (b) in the case of maintenance awards to the persons who would be mentioned in paragraph (a) if the references to paragraph 5 of the Schedule were deleted.

(2) It shall also be lawful for a body or an institution to adopt rules of eligibility which confine eligibility to the persons who would be mentioned in paragraph (1) if the references to paragraph 2

⁽¹⁰⁾ 1962 c. 12; the relevant provisions, as amended, are set out in Schedule 5 to the Education Act 1980 (c. 20); section 1(3)(d) was amended by the Education (Grants and Awards) Act 1984 (c. 11), section 4; relevant amendments to section 4 were made by the Education (No. 2) Act 1986, Schedule 4, paragraph 3, and by the Education Act 1994 (c. 30), Schedule 2, paragraph 2.

of the Schedule were deleted or if regulation 2(4) and (5) did not apply to the interpretation of this regulation and the Schedule.

(3) The bodies and institutions referred to in paragraph (1) are—

(a) the following research councils—

Biotechnology and Biological Sciences Research Council,
Economic and Social Research Council,
Engineering and Physical Sciences Research Council,
Medical Research Council,
Natural Environment Research Council,
Particle Physics and Astronomy Research Council;

(b) the following institutions—

the British Academy,
the British Museum (Natural History),
the Royal Academy of Engineering,
the Royal Society;

(c) the following further education establishments—

Coleg Harlech, Gwynedd,
Co-operative College, Loughborough,
Fircroft College, Birmingham,
Hillcroft College, Surbiton,
Northern College, Nr. Barnsley,
Plater College, Oxford,
Royal College of Art, London,
Ruskin College, Oxford,
the National Film and Television School, Beaconsfield.

(4) A reference to “relevant date” in this regulation, and for the purposes of the application of this regulation in the Schedule, is a reference to the date of the application for an award.

(5) Where rules of eligibility confine awards to persons who are or will be ordinarily resident in part only of the United Kingdom and Islands a person who is ordinarily resident in some other part of the United Kingdom and Islands on the relevant date shall not for the purposes of this regulation be considered to fall within paragraph 5 of the Schedule.

(6) The maker of awards may adopt different eligibility rules falling within paragraph (1) or (2) for different classes or descriptions of awards.

Postgraduate agricultural studentships

7.—(1) It shall be lawful for the Minister for Agriculture, Fisheries and Food or the Secretary of State for Wales to adopt rules of eligibility for awards made by him under section 2(3) of the Board of Agriculture Act 1889⁽¹¹⁾ which confine eligibility—

(a) in the case of fees awards to the persons who—

- (i) would be mentioned in paragraph 1 of the Schedule if the reference to “the United Kingdom and Islands” in paragraph 9 thereof were a reference to “the United Kingdom”, and
- (ii) are British citizens or who otherwise enjoy in the United Kingdom the status of a Commonwealth citizen,

and to the persons mentioned in paragraphs 2, 5, 6, 7 and 8 of the Schedule, and

- (b) in the case of maintenance awards to the persons who would be mentioned in sub-paragraph (a) if the reference to paragraph 5 of the Schedule were deleted.

(2) It shall also be lawful for the Minister or the Secretary of State to adopt rules of eligibility which confine eligibility to the persons who would be mentioned in paragraph (1) if the reference to paragraph 2 of the Schedule were deleted or if regulation 2(4) or (5) did not apply to the interpretation of the Schedule.

(3) For the purposes of the application of this regulation a reference in the Schedule to “relevant date” is a reference to the date of an application for an award.

Revocation and transitional provisions

8.—(1) The following Regulations are revoked:

- (a) The Education (Fees and Awards) Regulations 1994⁽¹²⁾;
- (b) The Education (Fees and Awards) (Amendment) Regulations 1995⁽¹³⁾; and
- (c) The Education (Fees and Awards) (Amendment) Regulations 1996⁽¹⁴⁾.

(2) In any case where the relevant date is before 1st September 1998—

- (a) a requirement that a person be settled in the United Kingdom within the meaning of the Immigration Act 1971⁽¹⁵⁾ shall not apply;
- (b) a person shall be mentioned in the Schedule for the purposes of regulation 4 if—
 - (i) at the relevant date he is settled in the United Kingdom within the meaning of that Act, and
 - (ii) he neither had the right of abode in the United Kingdom nor was settled therein within the meaning of that Act at, or at a time before, the beginning of the three year period preceding that date; and
- (c) the spouse of an EEA migrant worker who is not a national of a member State of the European Economic Area shall for the purposes of regulation 4 be subject to the residence conditions mentioned in paragraph 9 of the Schedule but the period of residence required shall be one year rather than three years.

(3) In any case where the relevant date is before 1st September 2000 a person shall be mentioned in the Schedule for the purposes of regulation 4 if—

- (a) at the relevant date he is settled in the United Kingdom within the meaning of the Immigration Act 1971,
- (b) he neither had the right of abode in the United Kingdom nor was settled therein within the meaning of that Act at, or at a time before, the beginning of the three year period preceding that date, and
- (c) at any time during that three year period he was ordinarily resident in Hong Kong.

⁽¹²⁾ S.I.1994/3042.

⁽¹³⁾ S.I. 1995/1241.

⁽¹⁴⁾ S.I. 1996/1640.

⁽¹⁵⁾ 1971 c. 77; amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4, by the Immigration Act 1988 (c. 14), sections 1, 3, 4, 6 and 10 and the Schedule, by the Asylum and Immigration Appeals Act 1993 (c. 23), sections 10 to 12.

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SCHEDULE

1. A person who on the relevant date—
 - (a) is settled in the United Kingdom within the meaning of the Immigration Act 1971, and
 - (b) meets the residence conditions referred to in paragraph 9.
2. A person who is a refugee, ordinarily resident in the United Kingdom and Islands, who has not ceased to be so ordinarily resident since he was recognised as a refugee, or is the spouse, or child of such a refugee.
- 3.—(1) A person who—
 - (a) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom,
 - (b) has been granted leave to enter to remain accordingly, and
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remainor who is the spouse or child of such a person.
 - (2) For the purposes of this paragraph “child” includes a person adopted in pursuance of adoption proceedings and a step-child.
4. A person who was admitted to his course in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.
5. A person who is a national of a member State of the European Community, or who is the child of such a national, who meets the residence conditions referred to in paragraph 9.
6. A person who is an EEA migrant worker who—
 - (a) may not be required to pay higher fees, or who may not be made ineligible for an award under rules of eligibility, by virtue of Article 7(2) or (3) of Council Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community, as extended by the EEA Agreement(16), or, where he is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of Article 7(2) and (3), and
 - (b) meets the residence conditions referred to in paragraph 9.
7. A person who is the spouse of an EEA migrant worker who—
 - (a) is installed in the United Kingdom with his spouse, and
 - (b) meets the residence conditions referred to in paragraph 9.
- 8.—(1) A person who is the child of an EEA migrant worker who—
 - (a) may not be required to pay higher fees, or may not be made ineligible for an award under rules of eligibility, by virtue of Article 12 of the above mentioned Council Regulation, or, where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member State in relation to matters which are the subject of Article 12, and
 - (b) meets the residence conditions referred to in paragraph 9.

(16) OJ No. L257, 19.10.68, p.2 (OJ/SE 1968 (II), p.457).

(2) For the purposes of this paragraph “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child, and “child” shall be construed accordingly.

9. The residence conditions referred to above are that—

- (a) the person has been ordinarily resident throughout the three year period preceding the relevant date, in the case of a person mentioned in paragraph 1, in the United Kingdom and Islands or, in the case of a person mentioned in paragraphs 5 to 8, in the European Economic Area; and
- (b) his residence in the United Kingdom and Islands, or in the European Economic Area, as the case may be, has not during any part of the period referred to in sub-paragraph (a) been wholly or mainly for the purpose of receiving full-time education.

Tessa Blackstone
Minister of State,

11th August 1997

Department for Education and Employment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st September 1997, replace the Regulations revoked by regulation 8. The drafting has been substantially altered, with only a few changes of substance. These changes will be noted below.

The Regulations provide that in the cases mentioned below it shall be lawful to differentiate between some or all of the persons referred to in the Schedule and anyone else. Such differentiation might otherwise be unlawful under the Race Relations Act 1976. Nothing in the Regulations is to be construed as rendering unlawful anything done which would have been lawful had the Regulations not been made (regulation 3).

The persons mentioned in the Schedule include those who have a connection with the United Kingdom and Islands. The connection required for the first time includes settlement in the United Kingdom within the meaning of the Immigration Act 1971. Settlement is defined in the Immigration Act as being ordinarily resident in the United Kingdom without being subject under the immigration laws to any restriction on the period for which the person in question may stay. The connection required continues to include ordinary residence in the United Kingdom and Islands other than for the purposes of receiving full-time education for the period of three years before a relevant date.

Other persons mentioned in the schedule include those who are excepted from the requirement of having a connection with the United Kingdom and Islands, including refugees, those given exceptional leave to remain in the United Kingdom, persons taking part in exchange programmes, nationals of member States of the European Community and their children who have been ordinarily resident in the EEA other than for the purposes of receiving full-time education for three years, and European Economic Area migrant workers, their spouses and children, who have been ordinarily resident in the EEA other than for the purposes of receiving full-time education for three years. New provision has been made to ensure that United Kingdom nationals who are EEA migrant workers are entitled to be treated in the same way as other migrant workers. No provision is made for persons

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who have recently become settled in the United Kingdom pursuant to a newly acquired right of abode, as was formerly the case.

A person is considered to be ordinarily resident in an area if he would have been so resident at the relevant time but for the fact that he, his spouse, his parent, guardian, or any other person having parental responsibility for him, or any person having care of him while he is a child, is temporarily employed outside the area (regulation 2(4)). For the purposes of eligibility for certain awards he will also be considered to be resident if he would have been so resident but for the fact that he or his spouse was temporarily receiving full-time education outside the area in question (regulation 2(5)).

Regulation 4 relates to tuition and certain other fees in respect of courses, full-time or part-time, provided by institutions within the further or higher education sectors, maintained by local authorities and certain other institutions providing teacher training courses. Persons who are not referred to in the Schedule may be charged higher fees than the persons who are referred to in the Schedule.

Regulation 5 relates to rules of eligibility for discretionary awards made by local education authorities under section 1(6) or 2 of the Education Act 1962. In the case of fees awards eligibility may be confined to all the persons mentioned in the Schedule other than persons with exceptional leave to remain and persons on exchange programmes. In the case of maintenance awards eligibility may be further confined by excluding European nationals and their children from eligibility. The maker of the awards may further confine eligibility by excluding refugees, and persons who have not been ordinarily resident in a relevant area because they were temporarily employed outside that area as mentioned above.

Regulation 6 relates to rules of eligibility for awards made by Research Councils and certain other specified institutions, and makes provision similar to regulation 5. However it is provided that if the maker of the awards so determines, eligibility may be confined to persons who are settled in the United Kingdom and who have been ordinarily resident in Great Britain for three years, rather than to persons who have been ordinarily resident in the United Kingdom and Islands for that period. The maker of the awards may further confine eligibility for persons who meet the requirement of residence in either the United Kingdom or Great Britain to persons who are or will be ordinarily resident in Great Britain, England and Wales, or England. Other categories of person mentioned in the Schedule, in particular refugees, European nationals and their children, and EEA migrant workers, remain eligible on the same basis as provided for in regulation 5.

Regulation 7 relates to the rules of eligibility for postgraduate agricultural studentships made by the Minister of Agriculture, Fisheries and Food or by the Secretary of State for Wales. Again provision is similar to provision made by regulation 5, but for the requirement of residence in the United Kingdom and Islands for three years is substituted a requirement of residence in the United Kingdom for that period, and a requirement that the person is a British or Commonwealth citizen. Again, other categories of person mentioned in the Schedule, in particular refugees, European nationals and their children, and EEA migrant workers, remain eligible on the same basis as provided for in regulation 5.

Transitional provisions ensure that the new requirement of settlement mentioned above will not apply in the case of courses beginning or applications made before 1st September 1998. The removal of the special treatment afforded to certain recently settled persons will also not apply to courses beginning or applications made before that date, or in the case of certain Hong Kong residents before 1st September 2000.